

EXECUTIVE OFFICER SUMMARY REPORT
May 8, 2002

ITEM: 10

SUBJECT: Fallbrook Public Utility District (PUD) request for review of Order No. 96-04, *General Waste Discharge Requirements Prohibiting Sanitary Sewer Overflows by Sewage Collection Agencies*, as a result of Divers Against Polluters' intent to sue Fallbrook PUD for violations of the Clean Water Act (*John Robertus*)

PURPOSE: To allow Fallbrook PUD an opportunity to address the Regional Board regarding proposed modifications to the provision contained in Order No. 96-04 prohibiting sanitary sewer overflows.

PUBLIC NOTICE: Public notification for this item was provided via the Regional Board agenda notice for today's meeting. The agenda was mailed out 20 days in advance of today's meeting and has also been posted on the Regional Board's website. This meets the requirements for public notification pursuant to California Code of Regulations, Title 27, Section 21730(b).

DISCUSSION: On April 3, 2002, the Regional Board received a copy of a Notice of Intent to Sue for Violations of the Clean Water Act (copy enclosed), dated March 4, 2002, sent by Cory Briggs, attorney at law, on behalf of Divers Against Polluters (DAP), to Fallbrook PUD. DAP alleges that Fallbrook PUD violated certain effluent limits, and monitoring and reporting requirements contained in the District's NPDES permit, Order No. 2000-12, *Waste Discharge Requirements for the Fallbrook Public Utility District Wastewater Treatment Plant No. 1, Discharge to the Pacific Ocean Via the Oceanside Ocean Outfall*. DAP also alleges violations of the sewer overflow prohibition contained in Order No. 96-04, *General Waste Discharge Requirements Prohibiting Sanitary Sewer Overflows by Sewage Collection Agencies*.

By letter dated April 2, 2002 (copy enclosed), Fallbrook PUD notified the Regional Board of measures it intends to take to address the violations cited by DAP and, specifically, requested a Regional Board hearing to revise language in Order No. 96-04 prohibiting sanitary sewer overflows. On April 15, 2002, representatives from Fallbrook PUD and Regional Board staff met to discuss DAP's

intent to sue and the proposed changes to Order No. 96-04 requested by Fallbrook PUD. During the meeting, Fallbrook PUD proposed alternate language to the SSO prohibition contained in Order No. 96-04. Staff is currently preparing a written response to Fallbrook PUD's request and will provide a copy as soon as it is available. It is our understanding that Item Nos. 1 and 2 of Fallbrook PUD's April 2 letter, regarding detection limits and the use of RCRA testing procedures, have been resolved and will be included in our response letter. The remaining items are as yet unresolved, and Fallbrook PUD may present additional information on these items at the May 8 meeting.

Prohibition A.1 of Order No. 96-04 (copy enclosed with relevant addenda) states that "the discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant is prohibited." This prohibition is consistent with prohibitions contained in the *Water Quality Control Plan for the San Diego Basin* (Basin Plan) as listed under Finding 6 of the Order.

In its April 2, 2002 letter, Fallbrook PUD incorrectly sites Order No. 96-04 as an NPDES permit. Note that Order No. 96-04 is not issued pursuant to the CWA and thus is not an NPDES permit. Also in the April 2 letter, Fallbrook PUD states that, "No other agencies to date were noticed for such a violation but certainly will be in the future." This statement is referring to notices by third parties and not to actions taken by the Regional Board. It should be noted that Regional Board staff has, and continues to, notify agencies of SSOs in violation of Order No. 96-04, through monitoring report response letters and notices of violation (NOVs).

The US EPA has also addressed the issue of prohibiting SSOs. They have drafted proposed SSO Rules that include a provision prohibiting sanitary sewer overflows similar to that contained in Order No. 96-04. The prohibition is based in part on CWA Section 301(a), which prohibits a discharge to waters of the United States except in compliance with other provisions of the CWA. The fact sheet for the proposed SSO rule and the draft language of the SSO prohibition are provided in the supporting documents. Staff understands that the SSO ruling, including the SSO prohibition, is scheduled for publication in the Federal Register in Fall 2002 after which the 120-day public comment period commences prior to promulgation.

LEGAL CONCERNS:

CWA Section 505(b) requires a 60-day period after an alleged violator is given notice of an intent to sue before the filing of the civil suit. Consequently for this case, the final filing date would be

May 4, 2002.

SUPPORTING
DOCUMENTS:

1. Notice of Intent to Sue for Violations of the Clean Water Act
2. Letter dated April 2, 2002 from Fallbrook PUD to John H. Robertus
3. Order No. 96-04 with Addendum No. 5
4. Fact Sheet for US EPA Proposed Rule to Protect Communities from Overflowing Sewers
5. Draft language of proposed US EPA SSO prohibition

RECOMMENDATION:

None at this time.